

Message

From: Nelson, Leverett [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2229A07C2CB442B182332D9DCC325F13-LNELSON]
Sent: 6/20/2019 2:44:47 PM
To: Breslin, John [breslin.john@epa.gov]
Subject: FW: Union says leaked e-mail shows 'malfeasance' in regulators' handling of PolyMet permit | Star Tribune

<http://m.startribune.com/leaked-email-raises-new-questions-about-regulators-handling-of-polymet-permit/511488342/>

Union says leaked e-mail shows 'malfeasance' in regulators' handling of PolyMet permit

Jennifer Bjorhus, Star Tribune

Concerns over the handling of a critical water permit for PolyMet Mining's proposed Minnesota copper mine deepened Tuesday following the disclosure of a leaked e-mail from a Minnesota pollution regulator to her counterparts at the U.S. Environmental Protection Agency (EPA).

The e-mail asks EPA officials not to file their written comments on the permit during Minnesota's public comment period, which had the effect of keeping the federal regulators' multiple criticisms out of the public record. It appears to support accusations by advocacy groups and a retired EPA attorney that the two agencies suppressed regulators' concerns about pollution risks of the mine.

The e-mail was released Tuesday afternoon by the union representing career employees of the EPA Region 5 office in Chicago, which oversees Minnesota's enforcement of federal pollution laws.

The e-mail is dated March 13 of last year and was written by Shannon Lotthammer, then assistant commissioner of the Minnesota Pollution Control Agency (MPCA), to EPA Region 5 Chief of Staff Kurt Thiede.

"We have asked that EPA Region 5 not send a written comment letter during the public comment period and instead follow the steps outlined in the MOA, and wait until we have reviewed and responded to public comments and made associated changes," Lotthammer wrote. The term "MOA" refers to the Memorandum of Agreement the two agencies signed decades ago, delegating federal enforcement authority to Minnesota.

Lotthammer, now assistant commissioner of the Minnesota Department of Natural Resources, declined to comment on Tuesday. In an e-mail she said her former agency should address the matter "given that it involves my time at the MPCA."

The EPA's inspector general announced last week that it has opened an investigation into the episode, and U.S. Rep. Betty McCollum, D-Minn., has faulted the agencies for a lack of transparency on the permit.

“This e-mail communication appears to represent an absolutely intolerable breach of the public trust by two regulatory agencies,” McCollum said in a statement Tuesday. “The public has every right to question whether the PolyMet permitting process was rigged against the legitimate environmental and public health interests of Minnesotans.”

MPCA spokesman Darin Broton said the e-mail merely “highlights the long-standing agreement between the EPA and MPCA that gives the state agency the authority to administer the federal permit program for water discharge.”

The two agencies spoke frequently about PolyMet’s water permit, he said, and the MPCA “made substantive changes” to the permit based on the conversations. He called the process “rigorous” and “professional.”

E-mail shows ‘malfeasance’

The union that released the e-mail, American Federation of Government Employees Local 704, said the exchange shows “malfeasance.”

“Folks are not following the rules at the MPCA and the EPA, and the public should know about it,” said Nicole Cantello, president of the local.

Cantello, a former EPA staff lawyer, also said Lotthammer’s e-mail contradicts a response that her agency filed in the Minnesota Court of Appeals. That document said: “MPCA did not receive written comments from EPA, did not take efforts to keep EPA’s written comments out of the administrative record, or fail to disclose the existence of EPA comments.”

Cantello said she does not know who supplied the e-mail to union leaders, only that it appears authentic: “I can tell from looking at the e-mail that it came from our system.”

Lotthammer sent the e-mail in March 2018, a few days before the end of a public comment period on the draft of PolyMet’s water quality permit. An official at EPA Region 5 ended up reading the agency’s detailed written criticism of the permit very quickly over the telephone to MPCA staff a few weeks later.

The EPA never submitted those comments into the public record; the MPCA issued PolyMet’s water quality permit in December 2018.

The state water pollution discharge permit was a key regulatory hurdle for PolyMet, a Toronto-based minerals firm that wants to build a \$1 billion copper-nickel mine in northeast Minnesota — the state’s first hard-rock mine. During more than a decade of reviews, PolyMet’s proposal triggered a fierce debate over jobs and the environment, but it cleared its final Minnesota regulatory hurdle late last year.

The EPA finally released the written comments last week after multiple parties — including the Star Tribune — requested copies. It released them to the Minnesota-based advocacy group WaterLegacy and to McCollum, who heads a House subcommittee that oversees the EPA and the U.S. Interior Department.

‘It was irregular, improper’

WaterLegacy lawyer Paula Maccabee said the new e-mail is evidence of wrongdoing.

“It is the custom and the practice for Region 5 to put their comments in the record during the public comment period in writing,” Maccabee said. “It was irregular, it was improper, it hides information the public has a right to know.”

Kevin Reuther, chief legal officer at the Minnesota Center for Environmental Advocacy, agreed. “This isn’t right, and I’m not buying the story that the PCA is telling about this, that they were just following a process in order to be more efficient,” he said. “It does not make sense.”

In the newly released EPA documents, staff regulators say the draft Minnesota permit would “authorize discharges that would exceed Minnesota’s federally approved human health and/or aquatic life water quality standards for mercury, copper, arsenic, cadmium, and zinc.”

In interviews last week, current and former MPCA officials said there was nothing unusual about the process and that they did address several of the EPA’s concerns.

However, Jeffery Fowley, a retired EPA lawyer from the agency’s Boston office who analyzed the draft and final permits, said key criticisms were not resolved. He sent [his analysis](#) to the EPA’s Office of Inspector General.

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